

THE HETEROGENEOUS OF STATE AND STATE GOVERNANCE: CASE OF INDONESIAN IRREGULAR MIGRANTS IN THE NETHERLANDS

Yasmine Soraya

Leiden University, the Netherlands
Correspondence: y.m.s.soraya@fgga.leidenuniv.nl

Abstract

The main issues of Indonesian migrant workers mostly lies on pre-departure phase, especially related to the issuance of travel document. They manipulate their data for passport application. From the bigger picture, this occurs because the high rate of corruption within the immigration office. However, the immigration department is not solely responsible for this problem, but also with BNP2TKI (National Body for the Placement and Protection of Indonesian Overseas Workers) and the Ministry of Manpower as they responsible for issuing regulations and procedures for migrant worker. Additionally, the Department of Foreign affairs, which accommodates and oversees all Indonesian embassies and consulates abroad, also plays a role concerning the legal and political protection of Indonesian citizens. The embassy or consulate consist of officials from many departments (immigration department, department of education and cultural affairs, etc.), and they are not only responsible to the ambassador but also their departments in Indonesia. The lack of integrated legal understanding between these four departments and the imbalance of work between them could be the factors of the issues related to the rights of migrant workers. The heterogeneity of the state above and the state governance happens not only in Indonesia but also in the destination country, and migrant workers should deal with two systems of legal governance which also experience transformations through time. This paper will discuss the impact of the heterogeneous state and state governance to Indonesian migrant workers in the Netherlands and how the migrants themselves navigate with these two systems.

Keywords: state heterogeneous, state governance, Indonesian migrant workers, irregular migrants, circular migration

Submitted : 28 October 2019 | Revised : 15 January 2020 | Accepted : 31 January 2020

I. INTRODUCTION

European countries are not official destination countries for Indonesian migrant workers. The workers from Indonesia who come and work in Europe are usually highly skilled workers; their permit to come and work in Europe is regulated under the European directives and national state regulations. The low skilled workers who come to Europe are usually coming from Eastern European countries or other European countries, as well as from Turkey or Morocco. Europe does not open its door for low-skilled migrant workers from the third national countries (other non-European countries). However, migrant workers from Asian countries who work in low skilled work sector exist.

European countries are the favourite destination places for migrant workers.¹ About 11,1% of workers in Europe are migrant workers.² Based on Eurostat report³ in 2009 there were 1,3 million migrants in the Netherlands. They are about 20% of the total Dutch population which 29% of them have Dutch nationality and 37 % from other European countries and 27% from outside the European Union. The most prominent migrant groups come from Turkey, Morocco, and Suriname.⁴ Moreover, there are several undocumented migrants which about 0,4-0,8% from the population in 27 European Union member countries.⁵ Dutch Immigration and Naturalisation Service estimated that there are between 75000- 185000 undocumented migrants in the Netherlands⁶ which Indonesian Embassy estimated that there are about 400-500⁷ undocumented irregular Indonesian workers in the Netherlands.

Since European countries are not the official destination countries for Indonesian migrant workers, the sending of Indonesian workers to Europe (particularly to the Netherlands) became one of the most significant migrant issues. Indonesian workers follow the official procedure to enter the Netherlands or another Schengen country as tourists or seaman, and they still stay there even after their visa is expired. In the Netherlands, there is an estimation of 15.000 Indonesians.⁸ Hundreds of thousands are undocumented Indonesian migrants who come and work in informal sector. Once they arrive in the Netherlands, they apply for job and stay until they want or deported. After get hired, they can earn money and send remittance to their family in Indonesia to pay and daily expenses of their family as well as to make savings for their future. When they have no debts and have enough savings, most of the workers will return voluntarily to Indonesia and reintegrate with their family and establish a new lives.

However, some migrants also face involuntary return and unsuccessful

¹ Maria-Teresa, Gijón-Sánchez, et al., "Better health for all in Europe: Developing a migrant sensitive health workforce," *Eurohealth* 16, no.1 (2010):17-20.

² OECD, "Foreign and Foreign-born Labour Force in OECD Countries," OECD, accessed 2011, http://www.oecd.org/document/30/0,3746,en_2649_37415_48326878_1_1_1_37415,00.html.

³ "Migration and Migrant Population Statistics," Eurostat, accessed 2013, http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Migration_and_migrant_population_statistics.

⁴ "Population Key Figures", Statistics Netherlands-CBS, accessed 2013,.

⁵ "Size and development of irregular migration to the EU," Vogel D, accessed 2009 ,http://irregularmigration.hwwi.de/typo3EN/ComparativePolicyBrief_SizeOfIrregularMigration_Clandestino_Nov09_2.pdf.

⁶ Toebes Biswas, Hjerm, Ascher, and Norredam, "Access to Health Care for Undocumented Migrants from a human Rights Perspective: A Comparative Study of Denmark, Sweden and the Netherlands," *Health and Human Rights* 4, No.2 (December 2012): 20.

⁷ Estimation data of Indonesian Embassy is based on the registered members of Indonesian Migrant Workers Union (IMWU NL), "98% Dokumen Buruh Migran di Belanda Bodong [98% Migrant Labour Documents Fake]," *Suara Merdeka*, accessed 10 August 2015 <http://berita.suaramerdeka.com/smcetak/98-dokumen-buruh-migran-di-belanda-bodong/>, 10.

⁸ "Orang-orang Indonesia di Negeri Kincir Angin LIPI [Indonesians People in the Netherlands]," LIPI, 2009, accessed from <http://u.lipi.go.id/1260082716>.

reintegration in Indonesia. These migrants will leave abroad, in this case, to the Netherlands for work. The circle problems of migration will keep rotating and only stop when the workers become old & retired or pass away.

Many scholars see that circular migration is not a new phenomenon. With the study for the past fifteen years or more on transnationalism of migrants, circular migration is being part of the discussion. Mainly related to political and immigration regulations between states, circular migration becomes a choice of states to open the possibility to have migrant workers.⁹ It could bring development and win-win-win (triple win) solution to the sending country, receiving country and also to the migrant.¹⁰

From the perspective of migrants, circular migration could bring advantages and drawbacks. Some scholars made the difference between managed and spontaneous circular migration.¹¹ Even though the criteria are the same; temporariness, repeat movement, and done by the same person/same groups of migrants; both also have advantages and drawbacks. The experience of undocumented constitutes a spontaneous circular migration. However, the study of circular migration of illegal workers barely found. Most studies on Indonesian migrant workers are discussing only on a specific phase of the circular migration; on the pre-departure phase or sending phase, or on the situation on the destination country, or the return and reintegration phase. There is barely found complete research describing or studying the whole phase of circular migration.

⁹ Kathleen Newland, "Circular Migration and Human Development," *MPRA Paper* 19225 no.13 (2009), Migration Policy Institute.

¹⁰ Steven Vertovec, "Circular Migration: the way forward in global policy?" International Migration Institute, University of Oxford, 2007 jo Wickramasekara, Piyasiri, *Circular Migration: A Triple Win or a Dead End*, Discussion Paper No. 15, International Labour Office, Bureau for Workers' Activities (ACTRAV), Geneva: ILO, 2011.

¹¹ Piyasiri Wickramasekara, "Circular Migration: A Triple Win or a Dead End."

Image 1. Circle of Migration of Indonesian Irregular Migrant Workers



The issues faced by Indonesian migrant workers in the Netherlands are vary. It depends and consists of all phases of circular migration, pre-departure phase, on the destination country, return, and reintegration phase. In every stage, migrant workers deal with some issues, and sometimes the issues are related between one to another.

Begin from the departure phase; the sending of Indonesian migrant workers to Europe has been an issue since there is no formal sending to European countries. The sending procedure of Indonesian migrant workers to other countries such as Malaysia, Hong Kong, Taiwan, etc. could not apply to Europe. In the end, people are misusing the legal procedure. Since it is not a formal sending, the existence of Indonesian migrant workers is not recognized as formal workers. They stay irregularly and work without a proper working permit. In such situation, migrant workers have to deal with many issues, socially and professionally as workers. As mentioned above, the return could be done voluntary and involuntary and, in the end, it also causes some issues at the reintegration phase.

This article studies the bigger picture of the issues faced by Indonesian migrant workers in the Netherlands since their departure phase. The study is not only focusing on the issues but also on the role of governments and states to it. The study will also describe how a state consists of many bodies/depart-

ments with many regulations and it could give an impact on the people, in this matter, to migrant workers. The research of this study uses secondary data obtained by various case studies dealt with in academic books, published articles in journals, and also from documents regarding state regulations.

II. THE STATES & MIGRANT WORKERS: PHASES, ISSUES & REGULATIONS

A. PRE-DEPARTURE PHASE: PROBLEMS OF GOVERNANCE: MISCONDUCT OF EMPLOYMENT AGENCIES

The Economy issue is one of the motivation of Indonesians to find work abroad. The difficulty to find work or a low salary level in Indonesia is one for the reasons of most Indonesians to look for a job abroad. High expenses, not only for daily costs but also for health care and education become also one of many reasons. The social security, though it was regulated since 2004, it was just applied in 2014. Therefore, the economic situation was difficult particularly to mid and low-class society in Indonesia.

Most of the process of departure of Indonesian migrant workers to the Netherlands is conducted by employment agencies. This has been regulated in Law 39/2004 (amended by Law 18/2017). The people trusted also the employment agencies to proceed with the departure because there is no other option, there is lack of information on how the procedure is and how complicated the procedure is. The process by employment agencies becomes the biggest issue since they mostly offer false promises to the workers in providing housing and work with good conditions and income in the Netherlands. These false promises attract the workers to go to Europe no matter how much money they must pay for the registration and preparation of departure.

Not all workers have the intention to go to Europe.¹² Some of them had an intention only to go abroad to work. They registered and sent some amount of money, however, the call to leave the country was not coming. The employment agencies promise to place them in a legal country of destination of migrant workers. When it comes unsuccessfully, they offer to send the workers to Europe with more requirements for money. Some workers pay up to 80-100 million Rupiah (about 6000 – 8000 Euro). They are willing to make a loan or sell all their belongings to pay the cost with consideration to get a return shortly after their arrival in the Netherlands. However, the promises remain,

¹² Amin Mudzakir, "Pekerja Indonesia di Belanda: Studi Kasus Pekerja Tidak Terampil dan Tidak Terdokumentasi [Indonesian Labour in the Netherlands: Case Study Unskilled and Undocumented Labour]," *Jurnal Kajian Wilayah* 3, no. 1 (2012), .

and the reality is much different. Some of the workers must be ended up staying working in the Netherlands even though as irregular workers to work and to pay the debt and some are returned to Indonesia with the burden of debt.

One of the cases in the pre-departure phase is the use of original passport with false data by Indonesian migrant workers. The employment agency arranges all the bureaucratic process including providing a passport for migrant workers. Most of the time, although the workers depend on the agency, the agency is often unable to provide the original and correct data of the passport. Their aim to obtain quick profits has caused the agency to provide passports quickly without providing the correct data of passport. This has happened often to Indonesian migrant workers. They obtain passports but the data is not correct. The issue of migrant workers using false documents or false data of passport has existed for years. From the bigger picture, this occurs because the level of corruption within the immigration office is still high. However, the problematic issues of documents and working abroad are not only the responsibility of the immigration department. The other departments such as BNP2TKI (National Body for the Placement and Protection of Indonesian Overseas Workers) and the Ministry of Manpower are also responsible because they are the bodies that establish the regulations and procedures for workers to work abroad. The existence of these different bodies creates various spaces for control which do not necessarily coincide with each. For example, Article 26 and 95 of Law No. 39/2004 have fueled institutional conflict between BNP2TKI and the ministry of manpower. Furthermore, lack of coordination between central and regional governments caused several issues and sometimes the government limits the authority and ability of regional governments to combat problems.¹³

Law No. 39 year 2004 amended by Law No. 18 year 2017 on the Protection of Indonesian Migrant Workers regulates some requirements for workers to go and work abroad. However, this regulation does not apply to workers who want to go to Europe. BNP2TKI as a placement body looks opportunity to place Indonesian migrant workers. In 2018, there is an opportunity to place Indonesian workers in Europe, however, it is the placement in Eastern European countries and not in Western European countries, particular in the Netherlands.¹⁴ Therefore, up to now, there is no formal sending of Indonesian workers to the Netherlands.

¹³ Keynote speech Ratna Saptari, "The Shifting Meanings of 'Illegality' and the Politics of Scale: Indonesian Migrant Workers in the Netherlands", UNILA Lampung, Indonesia, 2019.

¹⁴ "BNP2TKI Dapat Peluang Mengirim 22.330 PMI ke Polandia [BNP2TKI Get Opportunity to Deliver 22.330 PMI to Poland], *JPNN* (Indonesia), 26 October, 2018, <https://www.jpnn.com/news/bnp2tki-dapat-peluang-mengirim-22330-pmi-ke-polandia>.

The workers, therefore, use the formal way to go to Europe and the possible way at this moment is based on immigration law, going with a tourist visa or seaman visa which when it is expired and the workers will remain stay to work in the Netherlands as irregular workers.¹⁵ As tourists, Indonesian people could apply for Schengen visas and get into the European Union (EU) through countries such as Belgium, France, and Germany once they arrive in one of the Schengen countries,¹⁶ They take the train to go to the Netherlands, to settle and find work. Amin Mudzakir, in his research, found that there are three categories of illegal Indonesian workers in the Netherlands; *First*, those who are deceived by work agencies and paid 50-90 million Rupiah to go to the Netherlands. Secondly are those who have the purpose of working in the Netherlands and coming with a tourist visa. Thirdly are those who come with an invitation (from partner, family, au pairs, student visa, etc.).¹⁷ These ways are taken by Indonesian workers to come and work in the Netherlands since there is no formal sending of Indonesian workers to Europe.

On the other hand, European Union recognized and opens its door only for limited migrant workers such as for highly skilled workers and seasonal workers, also giving facilitate for intra corporate transfer of managers, specialists, and trainee employees as well as giving a single permit to work and residence.¹⁸ The Netherlands itself has a very strict permit for foreign workers under the *Wet Arbeid Vreemdelingen (Foreign National Employment Act) jo Vreemdelingenwet 2000 (Immigration law)*.¹⁹ The European Union and the Netherlands recognize only high-skilled foreign workers.

They open the door for high-skilled workers under 'EU Blue Card' directives²⁰ which giving high skilled migrants a permit to come and work in European countries. The Netherlands is also giving access for highly skilled migrants known as *Kennis migrant*. Furthermore, the Netherlands adopted the directive to accepting intra corporate transfer or ICT and seasonal workers. Seasonal workers have a temporary permit (single permit) to work and usu-

¹⁵ Yasmine Soraya, "Indonesian (undocumented) Migrant Workers in the Netherlands," *Picum* (blog), 15 February 2012, <http://picum.org/en/news/blog/32079/>.

¹⁶ "Without Borders, the Schengen Area," Europa Commission, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/schengen_brochure/schengen_brochure_dr3111126_en.pdf.

¹⁷ Amin Mudzakir, "Pekerja Indonesia di Belanda: Studi Kasus Pekerja Tidak Terampil dan Tidak Terdokumentasi [Indonesian Labour in the Netherlands: Case Study Unskilled and Undocumented Labour]," *Jurnal Kajian Wilayah* 3, no. 1 (2012), PSDR LIPI.

¹⁸ Europa Commission, "Without Borders, the Schengen Area."

¹⁹ *Wet Arbeid Vreemdelingen*, <https://wetten.overheid.nl/BWBR0007149/2018-01-01+jo+vreemdelingenwet> https://wetten.overheid.nl/BWBR0011823/201927/#Hoofdstuk3_Afdeling3_Paragraaf1_Artikel14

²⁰ Work permit for high-skilled workers based on Council Directive 2009/50/EC of 25 May 2015 on the conditions of entry and residence of third-country nationals for highly qualified employment. Also look at Soraya, Yasmine, *Migration of Highly Qualified Workers in EU and in the United States: EU Blue Card, the US Green Card, and the Visa H-1B*, LAP LAMBERT Academic Publishing, October 2010.

ally in the agricultural sector, the period of work is a maximum of 24 weeks.²¹ Usually, the workers who come to the Netherlands with this permit are from Eastern European countries.

There is limited recognition for low-skilled migrant workers in the Netherlands. Most of the Indonesian migrant workers who stay irregularly in the Netherlands work in the domestic sector. Migrant workers who work in the domestic sector are limited recognized, only when they are working for diplomats/ embassies.²² For the rest, they are not recognized as migrant domestic workers. Therefore, they remain irregular.

B. ARRIVAL PHASE & AT DESTINATION COUNTRY: UN-RECOGNIZED MIGRANT WORKERS

Since their arrival in the Netherlands, the workers directly face a problem. The employment agency that is responsible for them leaves them without fulfilling the promises of housing and work. Some of the workers are picked up in the destination country by the agency, some not. For those who are picked up, most of them should pay an extra pick up the cost. For those who are not picked up, usually, they go to the Indonesian embassy to find assistance since they have no place to go and no one they know. In this case, the embassy cannot do much and advise them to go back to Indonesia. This option is mostly not taken by the workers since they have debts they made to come to Europe, and they need to work to pay these debts.

Some workers also try to find other Indonesian and ask for assistance for temporary housing until they can survive to stay and find work. It is a difficult situation for them at the first arrival, and they need to adapt, not only to the new environment but also to the seasons, culture and language. Considering this difficulty, some parties taking benefit from this situation. They rent the house with high cost, frightened the migrants not to move to another place and also stealing the belongings or money of the workers that are saved in the room.

Since the promises of the agency are untrue, the workers must find the work by themselves. Most of them spread an advertisement for their service to clean the house or to babysit children. Since it is difficult to find work, the job trade between the workers becomes an issue among them. Some previous workers who have already a lot of jobs sell their work to the newcomer workers. The price of one job can reach 1500 Euro. This trade is illegal but happens

²¹ Seasonal Worker, https://ind.nl/en/work/working_in_the_Netherlands/Pages/Seasonal-worker.aspx

²² Protocol Guide for Diplomatic Missions and Consular Posts, ministerie van buitenlandse zaken, february 2019.

among the workers, in the sense of “eating” each other because of the difficult situation.

The situation and condition of work also become an issue. Some workers experience exploitation at works such as long working hours, low salaries, unhealthy working conditions, etc. Since most of them working illegally without proper documentation, the exploitation becomes easy to occur to the workers. With their situation and incapability to find formal work, the workers look for work in the informal sector (Mujiyadi & Unayah, 2009).²³ Informal sector such as in agriculture sector, manufacture and construction become the significant sector of migrant workers in Europe (Munz, 2007).²⁴ However, these sectors are usually fulfilled by migrants from Eastern Europe. Indonesian workers are generally going into the domestic sector. The informal sector is the sector fulfilled mostly by irregular workers since there is a great demand for workers in this sector and Dutch people have no interest to fulfil this sector. FNV, the biggest trade union in the Netherlands estimates that 100.000 households need domestic workers and there are only 6000 domestic workers in the Netherlands.²⁵ This sector is not yet fully recognized by the Dutch government and exempted by Dutch law as an ‘ordinary’ work, and it’s not included in Dutch labour law. It is still questionable if domestic work is real work. Under Dutch law, a part-time job is not a real work since the domestic workers nowadays work based on hours, and they do not live-in the employers’ house.²⁶ This is the reason why workers cannot avoid exploitation. The workers depend on the employer (with regards to wage, accommodation, and immigration status) because of the undefined regulations and isolated work conditions (Murphy, 2013),²⁷ The Dutch labour inspector, in this case, does not take any actions to give protection to the workers. They work with the immigration office to arrest the undocumented workers in the purpose to deport them from the Netherlands. European Union issued Employer Sanction Directives 2009²⁸ in regards to giving sanction to the employers who employ

²³ B. Mujiyadi and Unayah N, *Studi tentang Penanganan Pekerja Migran Domestik Bermasalah dan Keluarganya [Study on Problematic Migrant Domestic Labour and the Family]*, (Jakarta: P3KS Press, 2009).

²⁴ Munz R., “Migration, labour markets, and integration of migrants: an overview for Europe,” 2007, <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussionpapers/Labor-Market-DP/0807.pdf>.

²⁵ Amin Mudzakir, “Pekerja Indonesia di Belanda: Studi Kasus Pekerja Tidak Terampil dan Tidak Terdokumentasi [Indonesian Labour in the Netherlands: Case Study Unskilled and Undocumented Labour],” *Jurnal Kajian Wilayah* 3, no. 1 (2012), PSDR LIPI.

²⁶ Margriet Kraamwinkel, “Organizing in the Shadow: Domestic Workers in the Netherlands,” *Theoretical Inquiries in Law* 17, no.1 (February 2016).

²⁷ Murphy C. “The enduring vulnerability of migrant domestic workers in Europe,” *International and Comparative Law Quarterly* 62, (2013): 599-627.

²⁸ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009L0052>

undocumented workers.

The aims of working abroad are mostly to gain more income for the workers to send money to their families in Indonesia. Remittance is a significant private financial source for households in many countries (UNCTAD, 2008).²⁹ Also, for the workers in the Netherlands, they send a lot of money to Indonesia. However, since they have no proper document and working illegally, remittance becomes also one of the issues of the workers. The workers cannot open a bank account and do remittance via Bank if they can, they have limitations to do it, and they cannot send money via legal Remittance companies. Illegal remittance via persons becomes an option for the workers to send money to their family, and they face a significant risk to lose their money.

In regards to their immigration status, the workers cannot access social security without a proper document. They are afraid to go to the hospital or doctors when they are sick. However, the Netherlands is respecting human rights regardless of their immigration status. The undocumented still can access standard health care and be guaranteed for their health care.³⁰ As irregular migrants, they have basic rights that are protected under the constitutional law of the Netherlands.³¹ It is not only about rights to access health care, but also to have the basic rights of workers (minimum wage, vacation, maternity leaves, etc).³² They have rights of education (for their children), housing and shelter also rights to legal justice, and many more.³³

On the one hand, being undocumented is against the law; however, on the other hand, they are also protected under the law. Some organizations in the Netherlands, also in collaboration with local or national government institutions (such as health care institutions, police etc.) as well as international organizations, give protection to the undocumented workers.

The Indonesian government, through the embassy, also gives protection to its citizens, including undocumented workers. The Department of Foreign affairs, which accommodates and oversees all Indonesian embassies and consulates abroad, also plays a role concerning the legal and political protection of Indonesian citizens. The embassies or consulate consist of officials from many departments (the attaché from the immigration department, attaché of educational and cultural affairs from the department of education and cultural

²⁹ UNCTAD (2008), UNCTAD XII: Accra Accord, para.122.

³⁰ Wet Publieke Gezondheid jo zorgverzekeringswet jo koppelingswet.

³¹ Artikel 1: Grondwet voor het Koninkrijk der Nederlanden: Allen die zich in Nederland bevinden, worden in gelijke gevallen gelijk behandeld. Discriminatie wegens godsdiensten, levensovertuiging, politieke gezinheid, ras, geslacht of op welke grond dan ook, is NIET toegestaan.

³² "Right to Work", Basic Rights, accessed <https://www.basicrights.nl/glossary/right-to-work-nl/>

³³ "Basic Rights," Basic Rights, accessed <https://www.basicrights.nl/basic-rights-nl-2/>

affairs, etc.), and they are not only responsible to the ambassador but also their departments in Indonesia. The ambassador should balance the responsibility of his attaché and their service to the Indonesian community in the placement state. The imbalance responsibility could occur from lack of power or knowledge as well as the good intention of the ambassador.

For many years, there have been a lot of Indonesian migrant workers without having proper documents required by the immigration department in the Netherlands, such as work permits and stay permits. The Indonesian embassy in the Netherlands also was not taking any measures to protect their citizens in the Netherlands, when these migrant workers' passports expired. The undocumented Indonesian migrant workers had no rights to renew their Indonesian passport until 2014.

Instead of giving a passport, the Indonesian embassy in The Hague provided travel documents to send them back to Indonesia. Meanwhile, a lot of Indonesian workers still have the intention to stay and work in the Netherlands. For those who stay, they end up having no valid identity card. Their ID-less situation brings more vulnerability to the undocumented Indonesian migrant workers. Particularly in the case of illness, they cannot show any identity card to the hospital. When they need to send money back to their country of origin, they face difficulties to work through the regular money transfer mechanism.

Therefore, after a long struggle of campaign and lobby conducted by Indonesian migrant workers in the Netherlands, in early 2014, a circular letter of directorate general of immigration in Indonesia was issued and stated that the undocumented have the right to renew their Indonesian passport (No. IMI-0120-GR-01-10 dated 10 January 2014).

To be survived and protect their rights, the migrants established a union called the Indonesian Migrant Workers Union. This organization has a role as media for them to be united, share information and rights. It can become one of the strategies to protect their fundamental rights issues. With an organization, they could do lobby, campaign, and also work together with other organizations/ partners and build strong networks.

C. RETURN PHASE: THE ROLE OF INTERNATIONAL AND LOCAL ORGANIZATIONS AS WELL AS THE ROLE OF THE STATE

Several scholars urge that the return of migrant workers to their origin country is caused by the failure of the expectation of the workers. The condi-

tion of destination country does not meet the expectation of the workers.³⁴ On the other hand, De Haas, Fokkema, and Fassi³⁵ Were having argued that a livelihood strategy is used in sending the most appropriate household member to emigrate and come back once the mission has been accomplished. Both theories could be found on the field. Some workers are returned because they are failed (arrested by police, no work, no money to live, etc) and some of the workers are returned because they have paid their loan and made savings, and they want to start a 'new' life in their home country (Indonesia).

By the voluntary return, the workers can go back to Indonesia by themselves. They process their return by providing their flight ticket to Indonesia, or when they have not enough money, they could register themselves to an organization called IOM, International Organisation for Migration. IOM assists in return. They provide a flight ticket and even reintegration funds worth 1500 Euro. The Dutch government also coordinates with local NGOs such as Stichting ROS. It also used to work with Bridge to Better in big cities in the Netherlands to give return assistance for migrants. These organizations give training such as micro business and administration for the preparation for migrants to go back to their country. By having collaboration with IOM, these organizations also provide 1500 Euro for reintegration funds.

Involuntary return happens most of the time when the workers arrested by the police. When they are arrested, some of them can be released by the police with a guaranteed max of 28 days to do voluntary return. Some of them can be transferred directly also to the detention in waiting for their return. This called an involuntary return and DTV, Dutch organization of recovery, will proceed with the return of these migrants.³⁶

D. REINTEGRATION PHASE

Most of the workers have the intention to return to Indonesia. Therefore, they need to be prepared for their reintegration phase. At this moment, there are some efforts of reintegration that have been provided by the Indonesian government, including having collaboration with other parties such as Banks, local organizations, and Migrant workers union.

Based on a report done by SMERU, currently, there are four prominent institutions implement reintegration programs targeting returned migrants in Indonesia: government agencies, NGOs and associations, the business community, and donor institutions. The majority of these organizations focus on

³⁴ Bachtiar P. and Prasetyo D., "Return Migration and various reintegration programs for low-skilled migrant workers in Indonesia," *The Smeru Research Institute*.

³⁵ *Ibid*.

³⁶ Terugkeerbeleid, <https://www.rijksoverheid.nl/onderwerpen/terugkeer-vreemdelingen/terugkeerbeleid>.

economic reintegration, in particular emphasizing self-employment opportunities (entrepreneurship) for returned migrants. Some provide community assistance and capacity building programs to the assist social, cultural and psychological aspects of reintegration. These reintegration programs, economic and social, are provided not only at the national level but also at local government and reach the returned migrants directly.

The Netherlands also provides economic development support to Indonesia called official development assistance.³⁷³⁸ This support has been done for almost 70 years. Since 2000, one of the support programs is the development of villages, by empowering *Kecamatan (community recovery)* with the goal of rural poverty alleviation (including microcredit and women's empowerment) and better local government. Another support is also in the sector of good governance and human rights. These supports are significant and indirectly affect the reintegration program of migrant workers.

All of these supports, economic and social supports, have been done and provided. However, the number of circle of migration is still high. The returned migrants leave abroad again to work. Therefore, the effectivity of the reintegration programs, policies, financial support programs and other aspects related to the return and reintegration program in Indonesia should be reviewed. The Ministry of Labour, Ministry of Law and Immigration, Ministry of Economic, Ministry of Trade, Ministry of Cooperation and small-medium enterprises, Ministry of Women and Children, Ministry of villages and Ministry of Foreign affairs should have a collaboration program in related to the reintegration of migrant workers.

III. ANALYSIS

It is the task of states to give protection to their citizens but since governments are not a homogeneous body, and sometimes it causes an overlapping between authorities. The imbalance between one states' body to another can give also impact on the citizens, in this case, the migrant workers. The uncontrolled states' governance could also give impact to the citizens, in the end, instead of providing protection; States could also bring issues that should be faced by its citizens.

From the case of undocumented Indonesian workers in the Netherlands,

³⁷ Dutch Development Cooperation with Indonesia, The Impacts of Dutch ODA on Development in Indonesia from 1998 to 2016. <https://openaccess.leidenuniv.nl/bitstream/handle/1887/58488/Dutch%20Development%20Cooperation%20with%20Indonesia.pdf?sequence=1>

³⁸ Development Cooperation: the Netherlands and Indonesia <https://www.netherlandsandyou.nl/your-country-and-the-netherlands/indonesia/and-the-netherlands/development-cooperation>

we can see how heterogeneous state and state governance could give impact the migrant workers, and it happens in every phase of circular migration that experienced by the workers. At the pre-departure step, it is the role of BNP2TKI to place the workers. However, since there is no opportunity for the placement in Europe, at the end workers are using other ways by misusing the immigration law. The state governance of sending migrant workers which should be done by the Ministry of Labour is also missing; therefore, the role of employment agencies is significant for the workers. The issue they face of false data on their passport is not the only issue of immigration offices but happens because of the missing state governance done by the Ministry of Labor and the placement of BNP2TKI.

Furthermore, the EU and the Netherlands are not also recognizing low skilled migrant workers in particular who work in the domestic sector. As an impact, the workers came misusing the tourist or seaman visa and stay after the visa expired as undocumented workers. As undocumented, the existence of the migrants is against the law, but the Netherlands also give protection to the undocumented people. There is not only national, local or international organizations that assist the undocumented but also governments institution such as hospital and GGD. They help undocumented migrant workers.

The embassy as well, giving protection to the people but, within the embassy itself, every attaché is responsible to their department. They are not only responsible for the ambassador but also to their department in Jakarta. Also, for the return, the state has pointed a body to arrange the return of the people. And to do reintegration, at the national and regional level, the government has already made programs on it.

IV. CONCLUSION

We can see from above how the state heterogeneous is. The state consists of a lot of departments and ministries also institutions, in which every institution has the authority to make regulations. Sometimes the governance is missing, and no law exists, and all give impact to migrant workers, yet when the politic of the state changes. Migrant workers should deal with all of the situations. Even though the situation is complicated, fortunately, since their fundamental rights are protected, migrant workers could be survived and work in the Netherlands.

REFERENCES

Articles in journals and periodicals

- Biswas, Toebes, Hjern, Ascher, and Norredam, "Access to Health Care for Undocumented Migrants from a human Rights Perspective: A Comparative Study of Denmark, Sweden and the Netherlands," *Health and Human Rights* 4, No.2 (December 2012): 49-60.
- Mudzakir, Amin. "Pekerja Indonesia di Belanda: Studi Kasus Pekerja Tidak Terampil dan Tidak Terdokumentasi." *Jurnal Kajian Wilayah* 3. (2012): 47-71.
- Murphy, C. "The enduring vulnerability of migrant domestic workers in Europe." *International and Comparative Law Quarterly* 62. (2013): 599-627.
- Teresa, Maria., et.al, "Better health for all in Europe: Developing a migrant sensitive health workforce," *Eurohealth* 16, no.1 (2010):17-20.

Books and book chapters

- Mujiyadi, B. and N. Unayah. *Studi tentang Penanganan Pekerja Migran Domestik Bermasalah dan Keluarganya* [Study on assistance for domestic migrant workers assistance and their family. Jakarta: P3KS Press, 2009.
- Soraya, Yasmine , *Migration of Highly Qualified Workers in EU and in the United States: EU Blue Card, the US Green Card, and the Visa H-1B*, Saarbrücken: Lap Lambert Academic Publishing: 2010.

Legal documents

- Council Directive 2009/50/EC of 25 May 2015 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.
- The Netherlands, *Constitution for the Kingdom of the Netherlands*
- The Netherlands, *Public Health Act*.
- The Netherlands. *Foreigners Labor Act*.
- The Netherlands, *Protocol Guide for Diplomatic Missions and Consular Posts*.
- The Netherlands, *Return policy*.

Web sources

- Bachtiar, Palmira Permata and Dinar Dwi Prasetyo, *Return migration and various reintegration programs for low-skilled migrant workers in Indonesia*, The Smeru research Institute, <http://www.smeru.or.id/sites/default/files/publication/return-migration.pdf>.
- Basic Rights. "Right to work." <https://www.basicrights.nl/glossary/right-to-work-nl/>
- BNP2TKI Dapat Peluang Mengirim 22.330 PMI ke Polandia, <https://www.jpnn.com/news/bnp2tki-dapat-peluang-mengirim-22330-pmi-ke-polandia>.
- CBS. "Population; key figures.", <http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLen&PA=37296eng&D1=a&D2=0,10,20,30,40,58-59&HD=090302-1045&LA=EN&HDR=G1&STB=T>
- EU. "Europe without Borders, the Schengen Area." Accessed 10 Agustus 2014 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e_library/docs/schengen_brochure/schengen_brochure_dr3111126_en.pdf.
- Eurostat. "Migration and Migrant Population Statistics." <http://epp.eurostat.ec.europa>.

- eu/statistics_explained/index.php/Migration_and_migran_population_statistics.
- LIPI. "Orang-orang Indonesia di Negeri Kincir Angin [*Indonesian in the Netherlands*]. Accessed 10 Agustus 2014. <http://u.lipi.go.id/1260082716>.
- Munz, R. *Migration, labor markets, and integration of migrants: an overview for Europe* [online]. <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussionpapers/Labor-Market-DP/0807.pdf>
- Newland, Kathleen. "Circular Migration and Human Development," in *MPRA Paper No. 19225. Migration Policy Institute*, 2009. Available at <http://hdr.undp.org/en/content/circular-migration-and-human-development>.
- Nobble, Tessa. "Dutch Development Cooperation with Indonesia, The Impacts of Dutch ODA on Development in Indonesia from 1998 to 2016." Leiden University. <https://openaccess.leidenuniv.nl/bitstream/handle/1887/58488/Dutch%20Development%20Cooperation%20with%20Indonesia.pdf?sequence=1>
- OECD. *Foreign and foreign-born labour force in OECD countries* [online]. http://www.oecd.org/document/30/0,3746,en_2649_37415_48326878_1_1_1_37415,00.html.
- Soraya, Yasmine. "Indonesian (undocumented) Migrant Workers in the Netherlands." Picum.org. <http://picum.org/en/news/blog/32079/>.
- Suara Merdeka. "98% Dokumen Buruh Migran di Belanda Bodong [98% of migrant are fake,]" Accessed 10 Agustus 2014, <http://berita.suaramerdeka.com/smcetak/98-dokumen-buruh-migran-di-belanda-bodong/>
- The Ministry of Justice and Security, the Netherlands. "Seasonal Worker," https://ind.nl/en/work/working_in_the_Netherlands/Pages/Seasonal-worker.aspx.
- The Netherlands. "Development Cooperation: the Netherlands and Indonesia." <https://www.netherlandsandyou.nl/your-country-and-the-netherlands/indonesia/and-the-netherlands/development-cooperation>
- Thom, Kevin, "Repeated Circular Migration: Theory and Evidence from Undocumented Migrants." <http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=13E61975899C3AC6C0D61E77E603FBED?doi=10.1.1.178.6590&rep=rep1&type=pdf>
- UNCTAD. "UNCTAD XII: Accra Accord and Accra Declaration." In *Twelfth session of the United Nations Conference on Trade and Development (UNCTAD XII)*. Available at https://unctad.org/en/Docs/iaos20082_en.pdf.
- Vertovec, Steven. "Circular Migration: the way forward in global policy?," in *Working Paper 4*, International Migration Institute, 2007. Available at <file:///C:/Users/DELL/Downloads/WP4%20Circular%20Migration%20Policy.pdf>
- Vogel, D., "Size and development of irregular migration to the EU." *Clandestino research project* [online] 2009. Available at http://irregular-migration.hwwi.de/typo3EN/ComparativePolicyBrief_SizeOfIrregularMigration_Clandestino_Nov09_2.pdf

Others

- Wickramasekara, Piyasiri. "Circular Migration: A Triple Win or a Dead End," in *Discussion Paper No. 15*. International Labour Office. Geneva: ILO, 2011.